

Assembly Bill No. 1172

CHAPTER 571

An act to amend Sections 3058.65 and 3058.8 of the Penal Code, and to amend Sections 6608 and 6609.1 of the Welfare and Institutions Code, relating to inmates.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1172, Sharon Runner. Inmate release.

Existing law requires, prior to release from the custody of the Department of Corrections and Rehabilitation of a person who has been convicted of certain crimes of a sexual nature, the director to refer that person to the State Department of Mental Health for evaluation if the director determines that person may be a sexually violent predator.

Under existing law, if the State Department of Mental Health determines that the person is a sexually violent predator, the department is required to forward a request for the filing of a petition to the counsel designated by the county in which the person was convicted. The law authorizes civil commitment of the person to the State Department of Mental Health as a sexually violent predator for treatment in a secure facility, if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

Existing law relating to the release of inmates who have been convicted of certain violent crimes requires notice of the scheduled release to be given to prescribed persons.

This bill would include within this notice requirement persons scheduled for release from the State Department of Mental Health, including, but not limited to, conditional release, and would increase certain inmate release notice requirements from 45 days to 60 days.

Existing law relating to conditional release hearings for sexually violent predators requires the court to give a 15-day notice of the hearing to the committed person's attorney and to the State Department of Mental Health, and requires that, if approved by the court, the person be placed in the community within 21 days after receipt of the court's findings.

This bill would increase those notice requirements to 30 days.

Existing law, with certain exceptions, requires the department to provide a 15-day notice to local officials prior to recommending to the court that a sexually violent predator be conditionally released for community treatment.

This bill would increase that notice to 30 days.

This bill would require that copies of related documents be provided to the court and to the State Department of Mental Health.

The people of the State of California do enact as follows:

SECTION 1. Section 3058.65 of the Penal Code is amended to read:

3058.65. (a) (1) Whenever any person confined in the state prison is serving a term for the conviction of child abuse, pursuant to Section 273a, 273ab, 273d, any sex offense specified as being perpetrated against a minor, or an act of domestic violence, or as ordered by a court, the Board of Prison Terms, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections, with respect to inmates sentenced pursuant to Section 1170, shall notify the following parties that the person is scheduled to be released on parole, or rereleased following a period of confinement pursuant to a parole revocation without a new commitment, as specified in subdivision (b):

(A) The immediate family of the parolee who requests notification and provides the department with a current address.

(B) A county child welfare services agency that requests notification pursuant to Section 16507 of the Welfare and Institutions Code.

(2) For the purposes of this paragraph, “immediate family of the parolee” means the parents, siblings, and spouse of the parolee.

(b) (1) The notification shall be made by mail at least 60 days prior to the scheduled release date, except as provided in paragraph (2). In all cases, the notification shall include the name of the person who is scheduled to be released, the terms of that person’s parole, whether or not that person is required to register with local law enforcement, and the community in which that person will reside. The notification shall specify the office within the Department of Corrections that has the authority to make the final determination and adjustments regarding parole location decisions.

(2) When notification cannot be provided within the 60 days due to the unanticipated release date change of an inmate as a result of an order from the court, an action by the Board of Prison Terms, the granting of an administrative appeal, or a finding of not guilty or dismissal of a disciplinary action, that affects the sentence of the inmate, or due to a modification of the department’s decision regarding the community into which the person is scheduled to be released pursuant to paragraph (3), the department shall provide notification to the parties and agencies specified in subdivision (a) as soon as practicable, but in no case less than 24 hours after the final decision is made regarding the location where the parolee will be released.

(3) Those agencies receiving the notice referred to in this subdivision may provide written comment to the board or department regarding the impending release. Agencies that choose to provide written comments shall respond within 30 days prior to the inmate’s scheduled release, unless an agency received less than 60 days’ notice of the impending release, in which case the agency shall respond as soon as practicable prior to the scheduled release. Those comments shall be considered by the board or department which may, based on those comments, modify its decision regarding the community in which the person is scheduled to be released. The board or department shall respond in writing not less than 15 days prior to the

scheduled release with a final determination as to whether to adjust the parole location and documenting the basis for its decision, unless the department received comments less than 30 days prior to the impending release, in which case the department shall respond as soon as practicable prior to the scheduled release. The comments shall become a part of the inmate's file.

(c) In no case shall the notice required by this section be later than the day the person is released on parole.

SEC. 2. Section 3058.8 of the Penal Code is amended to read:

3058.8. (a) At the time a notification is sent pursuant to subdivision (a) of Section 3058.6, the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the designated agency responsible for notification, as the case may be, shall also send a notice to persons described in Section 679.03 who have requested a notice informing those persons of the fact that the person who committed the violent offense is scheduled to be released from the Department of Corrections and Rehabilitation or from the State Department of Mental Health, including, but not limited to, conditional release, and specifying the proposed date of release. Notice of the community in which the person is scheduled to reside shall also be given if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notification, or (2) within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notification. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release date or the community in which the person is to reside, the board or department shall provide the witness, victim, or next of kin with the revised information.

(b) In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the department or board informed of his or her current mailing address.

(c) The board or department, when sending out notices regarding an offender's release on parole, shall use the information provided by the requesting party in the form completed pursuant to subdivision (b) of Section 679.03, unless that information is no longer current. If the information is no longer current, the department shall make a reasonable attempt to contact the person and to notify him or her of the impending release.

SEC. 3. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the

community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel. The person petitioning for conditional release or unconditional discharge shall serve a copy of the petition on the State Department of Mental Health at the time the petition is filed with the court.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 30 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order

on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 30 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 4. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) (1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, and when a community placement location is recommended or proposed, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(A) The community in which the person may be released for community outpatient treatment.

(B) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The department shall also notify the Department of Justice.

(3) The notice shall be given when the department or its designee makes a recommendation under subdivision (e) of Section 6608 or proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal.

(4) The notice shall be given at least 30 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment under Section 6607, or in which the department or its designee is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than the department or its designee, within 48 hours after becoming aware of the petition or placement proposal.

(5) The notice shall state that it is being made under this section and include all of the following information concerning each person committed as a sexually violent predator who is proposed or is petitioning to receive outpatient care in a conditional release program in that city or county:

(A) The name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 by 3 1/8 inches in size, or clear copies of the fingerprints and photograph.

(B) The date, place, and time of the court hearing at which the location of placement is to be considered and a proof of service attesting to the notice's mailing in accordance with this subdivision.

(C) A list of agencies that are being provided this notice and the addresses to which the notices are being sent.

(b) Those agencies receiving the notice referred to in paragraphs (1) and (2) of subdivision (a) may provide written comment to the department and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. The written comment shall be filed with the court at the time that the comment is provided to the department. The written comment shall identify differences between the comment filed with the court and that provided to the department, if any. In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community. A copy of the suggested alternative placement location shall be filed with the court at the time that the suggested placement location is provided to the department. The State Department of Mental Health shall issue a written statement to the commenting agencies and to the court within 10 days of receiving the written comments with a determination as to whether

to adjust the release location or general terms and conditions, and explaining the basis for its decision. In lieu of responding to the individual community agencies or individuals, the department's statement responding to the community comment shall be in the form of a public statement.

(c) The agencies' comments and department's statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department's recommendation or proposal is not appropriate.

(d) (1) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(B) The community in which the person will probably be released, if recommending not to pursue recommitment.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The State Department of Mental Health shall also notify the Department of Justice. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

(3) Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. At the time that the written comment is made to the department, a copy of the written comment shall be filed with the court by the agency or agencies making the comment. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(e) (1) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation. The Department of Corrections and Rehabilitation shall notify the Department of Justice, the State Department of Mental Health, the sheriff or chief of police or both, and the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person is to be released.

(B) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

(2) The Department of Corrections and Rehabilitation shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

(f) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections and Rehabilitation to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections and Rehabilitation of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(g) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(h) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable.

(i) In the case of any subsequent community placement or change of community placement of a conditionally released sexually violent predator, notice required by this section shall be given under the same terms and standards as apply to the initial placement, except in the case of an emergency where the sexually violent predator must be moved to protect the public safety or the safety of the sexually violent predator. In the case of an emergency, the notice shall be given as soon as practicable, and the affected communities may comment on the placement as described in subdivision (b).

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.